



Alan Levine
T: +1 212 479 6260
F: +1-212 479 6275
alevine@cooley.com

December 21, 2018

By ECF

The Honorable Joel C. Hoppe
United States District Court for the Western District of Virginia
116 North Main Street, Room 314
Harrisonburg, VA 22802

Re: *Sines v. Kessler*, 17 Civ. 0072 (NKM) (W.D. Va.)

Dear Judge Hoppe:

We submit this letter on behalf of Plaintiffs in the above-captioned action to request that the deadline for the close of fact discovery be extended from the current date of February 8, 2019, to April 24, 2019, which is currently the date set for the close of expert discovery. We seek additional time in the discovery period primarily for Plaintiffs to depose Defendants, virtually none of whom have produced the documents necessary for Plaintiffs to prepare for their depositions.

As Your Honor is aware, the discovery of Defendants' documents and third-party discovery, particularly the discovery of Defendants' communications through Discord, have been very limited thus far, despite our efforts over the last several months to obtain those documents. On January 25, 2018, Plaintiffs requested that each Defendant produce, generally speaking, all documents and communications concerning the events at issue in this case. Communications among Defendants are vital in a case alleging a conspiracy and therefore critical to Plaintiffs' counsel's ability to depose Defendants in any meaningful way. Defendants have now certified that responsive documents are stored in Defendants' social media accounts and personal electronic devices, such as cell phones and laptop computers. To date, however, only a single Defendant – Jason Kessler – has imaged a single electronic device, and yet he still has not produced to Plaintiffs the resulting responsive ESI from that device.

Only with the Court's intervention have we recently obtained the ability to image Defendants' electronic devices to facilitate their document production. It will likely be a matter of weeks before Defendants are able to review their documents for potential production to Plaintiffs. Even assuming the utmost diligence by Defendants, there is a substantial likelihood that Plaintiffs will not receive the documents in enough time to review them and prepare for the depositions of over a dozen Defendants by the current close of fact discovery.

Cooley LLP 1114 Avenue of the Americas New York, NY 10036
t: (212) 479-6000 f: (212) 479-6275 cooley.com



The Honorable Joel C. Hoppe
December 21, 2018
Page Two

Similarly, although Plaintiffs served a third-party subpoena on Discord on January 2, 2018, there has been considerable delay obtaining Discord's compliance with that subpoena. This process was complicated by the requirement under the Stored Communications Act of obtaining Defendants' consents, another process that required this Court's intervention. Plaintiffs' counsel received the first tranche of Discord documents last week, followed by another production on December 18, 2018. The delayed disclosure of documents from both Defendants and Discord has deprived Plaintiffs of the bulk of Defendants' communications regarding the events at issue in this case. We are not in a position to schedule and proceed with Defendants' depositions until that important discovery is complete, given that the Discord messages were at the heart of the conspiracy alleged in this litigation and thus are crucial to Plaintiffs' ability to conduct meaningful depositions.¹ Discovery from other third parties has similarly been delayed, with nearly all subpoenaed third parties either responding with deficient productions or ignoring our subpoenas.

By contrast, Plaintiffs' document production is substantially complete and we do not anticipate scheduling issues from our side that would prevent the completion of Plaintiffs' depositions within the current fact discovery cut-off of February 8, 2019. Furthermore, we are optimistic that with the Court's recent assistance in obtaining ESI from Defendants and Discord, Plaintiffs will be able to take the remaining Defendants' depositions in February and March and complete fact discovery by April 24.

We will be prepared to discuss these issues with the Court at the conference scheduled for January 4 at 2 p.m. Counsels Campbell and Kolenich have advised they consent to this request; Counsels DiNucci and Jones have yet to respond.

Respectfully submitted,


Alan Levine

¹ Unlike the other Defendants, Defendant Kessler produced a substantial volume of documents, which allowed Plaintiffs to conduct his deposition on May 15, 2018.

CERTIFICATE OF SERVICE

I hereby certify that on December 21, 2018, the foregoing was filed with the Clerk of Court through the CM/ECF system, which will send a notice of electronic filing to:

Justin Saunders Gravatt
David L. Hauck
David L. Campbell
Duane, Hauck, Davis & Gravatt, P.C.
100 West Franklin Street, Suite 100
Richmond, VA 23220
jgravatt@dhdglaw.com
dhauck@dhdglaw.com
dcampbell@dhdglaw.com

Counsel for Defendant James A. Fields, Jr.

Bryan Jones
106 W. South St., Suite 211
Charlottesville, VA 22902
bryan@bjoneslegal.com

*Counsel for Defendants Michael Hill,
Michael Tubbs, and League of the South*

John A. DiNucci
Law Office of John A. DiNucci
8180 Greensboro Drive, Suite 1150
McLean, VA 22102
dinuccilaw@outlook.com

Counsel for Defendant Richard Spencer

Elmer Woodard
5661 US Hwy 29
Blairs, VA 24527
isuecrooks@comcast.net

James E. Kolenich
Kolenich Law Office
9435 Waterstone Blvd. #140
Cincinnati, OH 45249
jek318@gmail.com

Counsel for Defendants Jeff Schoep, Nationalist Front, National Socialist Movement, Matthew Parrott, Matthew Heimbach, Robert Ray, Traditionalist Worker Party, Jason Kessler, Vanguard America, Nathan Damigo, Identity Europa, Inc. (Identity Evropa), and Christopher Cantwell

I further hereby certify that on December 21, 2018, I also served the following non-ECF participants, via U.S. mail, First Class and postage prepaid, addressed as follows:

Loyal White Knights of the Ku Klux Klan
a/k/a Loyal White Knights Church of
the Invisible Empire, Inc.
c/o Chris and Amanda Barker
2634 U.S. HWY 158 E
Yanceyville, NC 27379

Augustus Sol Invictus
9823 4th Avenue
Orlando, FL 32824

Fraternal Order of the Alt-Knights
c/o Kyle Chapman
52 Lycett Circle
Daly City, CA 94015

Moonbase Holdings, LLC
c/o Andrew Anglin
P.O. Box 208
Worthington, OH 43085

Andrew Anglin
P.O. Box 208
Worthington, OH 43085

East Coast Knights of the Ku Klux Klan
a/k/a East Coast Knights of the
True Invisible Empire
26 South Pine St.
Red Lion, PA 17356

I further hereby certify that on December 21, 2018, I also served the following non-ECF participant, via electronic mail, as follows:

Elliott Kline
eli f mosley@gmail.com

s/ Robert T. Cahill
Robert T. Cahill (VSB 38562)
COOLEY LLP
11951 Freedom Drive, 14th Floor
Reston, VA 20190-5656
Telephone: (703) 456-8000
Fax: (703) 456-8100
Email: rcahill@cooley.com

Counsel for Plaintiffs